Utusan Melayu (M) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–02–228 OF 2001
MOKHTAR SIDIN, ARIFIN ZAKARIA AND NIK HASHIM JJCA
30 NOVEMBER 2004

Tort — Defamation — Slander of goods — Criticism over costumes manufactured by plaintiffs worn by world leaders — Whether slander of goods proven

Tort — Defamation — Defences — Work of art to general public — Whether criticism over costumes manufactured by plaintiffs worn by world leaders amounts to work of art to general public

Tort — Defamation — Libel — Alleged libel by defendant of first plaintiff — Whether second plaintiff alter ego of first plaintiff and therefore also suffered damage

Tort — Defamation — Libel — Criticism over costumes made by plaintiffs worn by world leaders at APEC meeting — Whether words in its natural and ordinary meaning defamatory of plaintiffs — Whether language used is extreme — Meaning intended by article in its original language

Tort — Defamation — Damages — Libel and slander of goods — Libellous article published in monthly women's magazine — Whether damages of RM1.3 million excessive — Whether trial judge influenced by prevailing trend in awarding damages

Tort — Defamation — Malice — Whether libellous article injured reputation of plaintiffs — Defendant taken to have intended consequences naturally resulting from his act

Tort — Defamation — Aggravated damages — Whether malice proved — Whether amount of aggravated damages may be as much as mother award

The appellants were the publisher, editor, journalist and printer respectively of a monthly magazine called 'Wanita'. The first respondent carried on the business of manufacturing batik materials and the second respondent was its managing director and its alter ego. The respondents were commissioned by the Ministry of International Trade and Industry ('MITTI') to supply batik costumes to all APEC leaders who attended the 1998 APEC meeting. The respondents claimed that the appellants' Bahasa Melayu article in the magazine had in their natural and ordinary meaning meant and were understood to mean that the respondents produced unsightly batik and the second respondent had brought shame to the country by allowing world leaders to wear unsightly and ugly costumes made from those batik materials. The respondents claimed for damages for slander of goods, libel and

aggravated damages. The learned trial judge found in favour of the respondents and awarded damages amounting to RM1.3 million against the appellants. The appellants appealed. The appellants submitted essentially on four grounds: (i) batik, being a work of art, once displayed to the general public, may thenceforth be commented and/or criticized upon by any member of the public and therefore the article was an honest comment not actuated by malicious intent on the part of the appellants against the respondents; (ii) in determining whether the said article was defamatory or not, consideration should be given to the original Bahasa Malaysia version in its entirety rather than to its English translation; (iii) the finding that the second respondent was the alter ego of the first respondent was erroneous; (iv) the damages awarded was excessive influenced by the prevailing trend in awarding the damages.

Held, dismissing the appeal on liability and allowing the appeal on quantum; damages reduced to total of RM250,000:

(1) The photograph as published in 'Wanita' was not taken on occasion of a display of batik silk materials before the public. What was worn by the leaders as appeared in the photograph was presented by MITTI and it was not put on display by the respondents. In the premises it was not meant to invite criticism. Moreover, there was no evidence to show that the third appellant was a qualified art critic (see para 9).

(2) The words complained of far exceeded the bound of fair comment and just criticism. The language used was so extreme that no fair-minded person, however obstinate and prejudiced his views were, would have honestly used them (see para 10).

(3) On the question of malicious intent, the law looks at the tendency and consequences of the publication and if the defendant has published words which have in fact injured the plaintiff's reputation, the defendant must be taken to have intended the consequences naturally resulting from his act (see para 12). The learned judge had correctly construed and assessed the Bahasa Malaysia text of the article in its entirety meticulously and given the natural and ordinary meaning that a reasonable man on the street would have of the article and consequently found that the words complained of were defamatory of the respondents (see para 14).

(4) There were evidence to support the finding that the second respondent was the alter ego of the first respondent (see para 15). Thus, considering the evidence as a whole and particularly from the contents of the articles complained of and the defences put forward, the article was a grave slander of the first respondent's goods and libel upon the second respondent. By reasons of the words and in consequence thereof the first respondent had been gravely injured in its manufacturing and

trading character and the second respondent had been seriously injured in her personal business reputation and goodwill (see para 16).

(5) The learned judge had failed to properly address his mind when he held that the article complained of was published in the newspapers when in actual fact it was published in more restricted publication (see para 24). This amounted to misdirection on the part of the learned judge that warranted interference by the court (see para 25). The learned trial judge had misapprehended the facts and was also influenced by the prevailing trend in awarding the damages (see para 26); *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161 followed.

(6) With regard to the award of aggravated damages, there was indeed a case for the award. The finding of fact that the appellants were motivated by actual malice in publishing the article complained of warranted the making of an award of aggravated damages. However, the amount of aggravated damages must be a reasonable one. A reasonable amount should not be as much as the mother award (see para 27).

(7) The learned judge was correct in refusing to make separate awards under the head of innuendo for slander of goods and libel as suggested by the respondents. At the trial, the respondents had not applied to amend to include separate causes of action for innuendo. And since in this case the respondents had not pleaded specifically for damages for innuendo, the claim for such damages cannot be entertained (see para 30).

[**Bahasa Malaysia summary**

Perayu-perayu merupakan penerbit, penyunting, wartawan dan pencetak kepada majalah bulanan yang bernama 'Wanita'. Responden pertama telah menjalankan perniagaan pengilangan material batik dan responden kedua merupakan pengarah urusannya dan alter egonya. Responden telah diarahkan oleh Kementerian Perdagangan Antarabangsa dan Industri ('MITTI') untuk membekalkan pakaian batik kepada kesemua ketua negara yang menghadiri persidangan APEC. Responden mengatakan bahawa satu artikel Bahasa Melayu perayu di dalam majalah di dalam maksud biasa dan semula jadi bermaksud dan difahamkan sebagai bermaksud bahawa responden mengeluarkan batik-batik yang tidak cantik dan responden kedua telah membawa malu kepada negara dengan membenarkan pemimpin dunia memakai baju yang hodoh dan tidak cantik yang diperbuat daripada material batik tersebut. Responden telah menuntut ganti rugi bagi slander barang-barangan, libel dan ganti rugi teruk. Hakim telah memihak kepada responden dan telah mengawardkan ganti rugi berjumlah RM1.3 juta terhadap perayu. Perayu telah merayu. Perayu telah berhujah berdasarkan kepada empat alasan: (i) Batik, yang merupakan satu kerja seni, apabila dipertontonkan kepada orang awam, boleh seterusnya dikomen dan dikritik oleh mana-mana orang

awam dan oleh kerana itu artikel tersebut merupakan komen ikhlas yang tidak digerakkan oleh niat jahat di pihak perayu terhadap responden; (ii) untuk menentukan sama ada artikel tersebut adalah fitnah atau tidak, pertimbangan hendaklah dibuat kepada versi asal Bahasa Malaysia secara keseluruhannya berbanding terjemahan Inggeris; (iii) keputusan bahawa responden merupakan alter ego kepada responden pertama adalah salah; (iv) Ganti rugi yang diawardkan adalah keterlaluan yang dipengaruhi oleh budaya yang wujud di dalam mengawardkan ganti rugi.

Diputuskan, menolak rayuan atas liabiliti dan membenarkan rayuan terhadap kuantum; ganti rugi dikurangkan kepada RM250,000:

(1) Fotograf yang diterbitkan di dalam 'Wanita' tidak diambil semasa pameran material batik sutera kepada orang awam. Apa yang dipakai oleh pemimpin-pemimpin seperti mana yang kelihatan di dalam fotograf telah disampaikan oleh MITTI dan tidak dipamerkan oleh responden. Kerana itu ia bukanlah bertujuan untuk menarik kritikan. Lebih-lebih lagi, tiada keterangan yang menunjukkan bahawa perayu ketiga yang menulis artikel adalah seorang pengkritik seni yang layak (lihat perenggan 9).

(2) Perkataan-perkataan yang digunakan jauh melampaui had komen wajar dan kritikan adil. Bahasa-bahasa yang digunakan adalah melampau di mana tiada seorang pun yang berfikiran waras, sekalipun tegar dan prejudis pandangannya, secara jujur akan menggunakannya (lihat perenggan 10).

(3) Pada persoalan niat jahat, undang-undang melihat kepada kecenderungan dan kesan-kesan penerbitan dan sekiranya defendan telah menerbitkan perkataan-perkataan yang telah merosakkan reputasi plaintif, defendan mestilah dianggap berhasrat kepada kesan-kesan yang secara semula jadinya terhasil daripada tindakannya (lihat perenggan 12). Hakim telah mentafsir dan menilai dengan betulnya teks Bahasa Malaysia artikel dan telah berbuat demikian secara keseluruhan dan berhati-hati dan mengambil kira makna biasa dan natural artikel tersebut kepada orang biasa sebelum mendapati bahawa perkataan-perkataan yang digunakan itu telah sebenarnya memfitnah responden-responden (lihat perenggan 14).

(4) Terdapat keterangan bagi menyokong penemuan bahawa responden kedua adalah alter ego responden pertama (lihat perenggan 15). Oleh itu, melihat kepada keterangan secara keseluruhannya dan terutamanya kepada kandungan artikel yang diadu dan pembelaan yang diutarakan, artikel adalah suatu slander yang teruk terhadap barangan responden pertama dan suatu libel terhadap responden kedua. Akibat daripada perkataan-perkataan dan kesan-kesannya, perniagaan dan perusahaan responden pertama telah rosak dengan teruknya, sementara responden

kedua pula mengalami kerosakan pada nama baik dan reputasi niaganya (lihat perenggan 16).

(5) Hakim gagal membuat pertimbangan yang sewajarnya apabila mendapati bahawa artikel yang diadukan itu diterbitkan di dalam surat khabar apabila pada fakta sebenarnya ia diterbitkan di dalam penerbitan yang terhad (lihat perenggan 24). Ianya dengan itu adalah suatu salah arahan oleh hakim bicara sekaligus mewajarkan campurtangan mahkamah (lihat perenggan 25). Hakim telah tersalah faham akan fakta-fakta dan telah dipengaruhi oleh trend semasa ketika mengaward ganti rugi (lihat perenggan 26); *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161 diikut.

(6) Sebenarnya terdapat sokongan untuk award ganti rugi teruk. Penemuan fakta bahawa perayu didorong oleh niat jahat sebenar dalam menerbitkan artikel yang diadukan menjustifikasikan pemberian ganti rugi teruk. Walau bagaimanapun, kadar ganti rugi yang diawardkan mestilah munasabah. Kadar yang munasabah mestilah tidak sama banyak dengan award ibu (lihat perenggan 27).

(7) Hakim adalah betul apabila enggan memberi ganti rugi berasingan di bawah tajuk innuendo bagi slander barangan dan libel. Semasa perbicaraan, responden tidak membuat permohonan untuk meminda bagi memasukkan kausa tindakan berasingan bagi innuendo. Oleh kerana responden tidak memplid permohonan untuk ganti rugi bagi innuendo secara spesifik, tuntutan bagi ganti rugi berkenaan tidak boleh dilayan (lihat perenggan 30).]

Notes

For cases on defamation generally, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 193–409.

For cases on defences in defamation, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 267–273.

For cases on aggravated damages, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) para 116.

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 314–434.

For defences in defamation, see 5 *Halsbury's Laws of Malaysia* paras [80.092]–[80.102].

For libel generally, 5 *Halsbury's Laws of Malaysia* paras [80.110]–[80.113].

Cases referred to

Charleston v News Group Newspapers Ltd [1995] 2 AC 65 (refd)

E Hulton & Co v Jones (1910) AC 20 (refd)

Fisher v Clement (1830)10 B&C 472 (refd)

Karpal Singh a/l Ram Singh v DP Vijandran [2001] 4 MLJ 161 (folld)

McQuire v Western Morning News (1903) 2 KB 100 (refd)

Legislation referred to

Defamation Act 1957 ss 8, 9

Appeal from: Civil Suit No S2–23–72 of 1999 (High Court, Kuala Lumpur)

Mohd Ariff Yusof (M Reza Hassan with him) (Cheang & Ariff) for the appellants.
Shamsul Bahrain Ibrahim (Skrine & Co) for the respondents.

Nik Hashim JCA (delivering judgment of the court):

BACKGROUND

[1] This appeal arises from the judgment of the High Court at Kuala Lumpur (see [2001] 2 MLJ 574) ordering the appellants to pay to:

(i) the first respondent the sum of RM300,000 as general damages for slander of goods;

(ii) the second respondent the sum of RM700,000 as general damages for libel; and

(iii) the second respondent the sum of RM300,000 as aggravated damages;

and interest thereon at the rate of 4% per annum from the date of publication to the date of the judgment. Costs were also awarded to the respondents.

[2] The first appellant was the publisher of the daily newspaper and of a monthly magazine called 'Wanita'. The second appellant was the editor of the said magazine. The third appellant was employed by the first appellant as its journalist and the author of the article complained of. The fourth appellant was the printer of the said magazine.

[3] The first respondent carried on the business of manufacturing batik materials under the trade name of 'Tjanting' and the second respondent was and is its managing director and its alter ego.

[4] In 1998, under a contract, the respondents were commissioned by the Ministry of International Trade and Industry (MITTI) to supply shirts and *baju kurung* made from batik materials manufactured by the first respondent to all 21 APEC leaders who attended that meeting. The leaders wore the shirts and *baju kurung* supplied by the respondents at a ceremony held at Cyberjaya. Photographs of the ceremony showing the leaders wearing those clothes supplied by the respondents were taken. In the February 1999 of 'Wanita', the appellants published an article in Bahasa Melayu of the photograph of the APEC leaders taken with comments as to the quality of the respondents' batik. The article written by the third appellant reads:

APEC

Petang itu di samping bercakap mengenai Bomba seperti lain-lain tempat yang saya pergi, orang tidak lupa bercakap mengenai Amerika. Semua orang marahkan *Al Gore*, meluat dengan *Malott* tetapi saya geram dengan pakaian batik yang dipakai pemimpin APEC. Hodoh. Sampai hati mereka persembahkan kraf tangan kita yang indah dalam rupa yang buruk kepada tetamu negara. Walhal inilah masanya mencanang kecantikan barangan tulen kita.

Setiap kali melihat gambar mereka berbaju batik hati saya sakit. Siapalah yang mencipta batik baju itu? Daripada corak, paduan warna hingga kepada potongan, tidak halus, tidak harmoni, tidak eksklusif, potongan pula tidak terletak di badan, meleweh, melendut, ada gedoboh ada sendat. Ini tidak sepatutnya berlaku. Tolong jangan beri alasan tidak tahu ukuran mereka.

Soal mutu inilah yang sering dirungutkan oleh pengguna. Bukan kerana tiada upaya tetapi lebih kepada tahap kawalan mutu. Seperti kata seorang rakyat Singapura, untuk bandingkan barangan Malaysia, Singapura dengan barangan Jepun dan Australia, barangan mereka jauh bermutu tinggi meskipun dijual di pasar raya borong.

Oleh itu jangan cepat berbangga apabila rakyat mulai membeli barangan tempatan. Kerana tanpa mutu peralihan ini hanya sebentar. Itulah sebabnya walau gawat jenama luar negara tetap menjadi igauan, cuma nafsu berbelanja dikurangkan. Dan kemungkinan itu kempen memulau barangan Amerika dan British kurang mendapat sambutan.

Seperti kata teman, tersentuh hati melihat rakyat Iraq, rasa-rasa nak ganyam Amerika dan British. Tetapi tadi pergi Lot 10, yang berkenan beg *Liz Claiborne,* jaket *Donna Karan*. Itu belum masuk lagi ke *Next* atau *Laura Ashley.* Habis macam mana nak pulaukan barang buatan dua negara ini? Walaupun hati nekad tidak mahu beli, kepala asyik terbayangkannya.

The certified English translation reads:

APEC

That evening, besides talking about Bomba, everywhere I went people were talking about America. They were all angry at *Al Gore* and nauseated by *Malott* but I was more disgusted with the batik clothes worn by the APEC leaders. Unsightly. It was unthinkable for them to present our beautiful handicraft in such an ugly fashion to the State guests when it should have been an opportune time to proclaim the beauty of our authentic goods.

Every time I look at their photographs in batik shirts, I have this resentment. Who on earth created such batik shirts? From the design, combination of colours right up to the style, not refined, not in pleasing combination, not exclusive, the cutting was not made to rest on the body, carelessly done, sagging, some are big and loose and some are tight. This should not have happened. It does not lie in the mouth to say that the measurements were not known.

> Quality has always been the main complaint by consumers. It is not due to lack of ability but, rather lack of quality control. As one Singaporean said, in comparison with Malaysia and Singapore goods, Japanese and Australian goods are of far better quality even though they are sold in wholesale market overt.
>
> So, don't be too hasty in taking pride when people start buying local goods. Because without quality, this change is only a short while. For this reason, in spite of economic upheaval, people are still raving mad over foreign brands, only the temptation to spend must be reduced and the possibility is that the campaigns to boycott American and British goods have little response.
>
> As said by a colleague, it was very touching to see the Iraqis, one was tempted to 'ganyam' (sic) the Americans and the British. But just now I went to Lot 10 and found to my taste *Liz Claiborne* bags, *Donna Karan* jackets, what more had entered *Next* or *Laura Ashley*. So how are we to boycott goods from the two countries? Even though the heart is determined not to buy, they are always on the mind.

[5] At the trial the respondents contended that those words in the article in their natural and ordinary meaning meant and were understood to mean that the respondents produced unsightly batik and the second respondent had brought shame to the country by allowing the world leaders to wear unsightly and ugly shirts and *baju kurung* made from those batik materials. Further, the article implied that the contract to manufacture and supply the clothing to be worn by APEC leaders should not have been given to the respondents as they did not have the capability of producing quality handicraft befitting the country's reputation. The first respondent pleaded that by reason of the said words and in consequence thereof it had been gravely injured in its manufacturing and trading character. The second respondent pleaded that she had been seriously injured in her personal business reputation and good will and had suffered considerable distress and embarrassment. In their defence the appellants denied that the words complained of referred to or were understood to refer to the respondents or to any one of them. They also denied that the words bore or were capable of bearing any of the meanings alleged by the respondents. They also denied any allegation of malice on their part. There was also reliance on justification and fair comment on ss 8 and 9 of the Defamation Act 1957 respectively.

[6] The learned trial judge found in favour of the respondents and made the orders stated above. Hence this appeal by the appellants. However, the respondents being dissatisfied with the award, cross appealed against the decision for not awarding damages for separate causes of action in respect of each of the respondents for innuendoes in slander of goods claimed by the first respondent and in libel claimed by the second respondent.

APPEAL

[7] Before us learned counsel for the appellants submitted essentially on four grounds:

(i) batik, being a work of art, once displayed to the general public, may thenceforth be commented and/or criticised upon by any member of the public and therefore the article, read in the light of the various positive articles concerning the respondents during and after the publication of the article, was an honest comment not actuated by malicious intent on the part of the appellants against the respondents;

(ii) in determining whether the said article was defamatory or not, consideration should be given to the original Bahasa Melayu version in its entirety rather than to its English translation;

(iii) the finding that the second respondent was the alter ego of the first respondent was erroneous;

(iv) the damages awarded was excessive influenced by the prevailing trend then in awarding the damages.

[8] It is noted that the appellants did not rely on justification as a ground in this appeal.

WORK OF ART

[9] We agree with the respondents that the photograph as published in the 'Wanita' was used by the third appellant to mount an attack on them was not taken on occasion of a display of batik silk materials before the public because in coming to the conclusion that the batik design is a work of art, the learned judge was not placing reliance upon the fact that the batik silk materials worn by the APEC leaders was a work of art in visual representation. What was worn by the leaders as appeared in the photograph was presented by MITTI and it was not put on display by the respondents. In the premises it was not meant by MITTI to invite criticism. Moreover, there is no evidence to show that the third appellant was a qualified art critic.

FAIR COMMENT

[10] On the subject of fair comment, we agree with the learned trial judge that the words complained of far exceeded the bound of fair comment and just criticism. The usage of the words such as '*Hodoh*', '*rupa yang buruk*', '*sakit hati melihat*', '*siapalah yang mencipta baju batik itu*?', '*corak tidak halus*', '*paduan warna tidak harmoni, tidak eksklusif*', '*potongan pula tidak terletak di badan, meleweh, melendut, gedoboh, sendat*', '*tidak bermutu*', '*barang yang dijual di pasaraya borong lebih bermutu*' are certainly words that tend to disparage the respondents in the world of batik fashion. The language used was so extreme that no fair-minded person, however obstinate and prejudiced his views were, would have honestly used them (*McQuire v Western Morning News* (1903) 2 KB 100). The words complained of were not in fact the genuine expression of the appellants' views. It is obvious from the title 'APEC' and the opening

paragraph that the appellants had used the heat of public anger at Al Gore and Malott to libel and slander the respondents. Although the title and the public outrage towards Al Gore were totally divorced from the contents of the article and the atmosphere at the declaration ceremony of the APEC leaders at Cyberjaya had nothing to do with the quality of the batik silk, it was purposely imported into the article just to excite adverse opinions of others against the respondents' batik.

MALICIOUS INTENT

[11] It is the appellants' contention that the existence of various positive articles concerning the respondents published by the appellants before, during and after the publication of the article shows that there was no malicious intent whatsoever on the part of the appellants against the respondents.

[12] On the question of malicious intent, the law looks at the tendency and consequences of the publication and if the defendant has published words which have in fact injured the plaintiff's reputation, the defendant must be taken to have intended the consequences naturally resulting from his act (*Fisher v Clement* (1830)10 B&C 472). It is no defence to show that the defendant did not intend to defame the plaintiff, if reasonable people would think the language to be defamatory of the plaintiff (*E Hulton & Co v Jones* (1910) AC 20).

[13] In the present case, the learned judge was right when he held that at the time the third appellant wrote the article complained of she knew it to be untrue. The photograph of the leaders wearing the batik shows even to a lay person that the charges levied against the respondents by the appellants have not been borne out. The material and pattern of the batik shirts and *baju kurung* were approved by MITTI. Thus, by labeling the batik materials as '*hodoh*' and '*rupa yang buruk*' (ugly and unsightly), the appellants were not really criticizing the batik worn by the leaders, but in actual fact were writing with an indirect and dishonest intention to injure the respondents. It is clear that the appellants used the public anger at Al-Gore and Malott to mount their libelous attack on the respondents. As there was recklessness in the publication with total disregard as to whether the statement was true or false, then it was proper for the trial court to hold malicious intent on the part of the appellants against the respondents.

WHETHER THE JUDGE HAD CONSIDERED THE ARTICLE IN ITS ENTIRETY

[14] On the appellants' complaint that the learned judge had placed great weight on the English translation of the article in deciding whether the article was defamatory, we find the complaint devoid of any merit. We agree with the learned judge that the translation was a literal one translated from Bahasa

Melayu into English by a certified court interpreter. We think it is a correct translation. The learned judge understood Bahasa Melayu and in his analysis in determining whether the words complained of are denigratory of the respondents, the learned judge even reproduced the offending words in Bahasa Melayu to support his finding (see at p 599 G to H of the law report). We are satisfied that the learned judge had correctly construed and assessed the Malay text of the article in its entirety meticulously and given the natural and ordinary meaning that a reasonable man on the street would have of the said article and consequently found that the words complained of are defamatory of the respondents.

ALTER EGO

[15] On the issue of the second respondent being found as the alter ego of the first respondent, we are in complete agreement with the learned judge as there is evidence to support the finding. The learned judge at p 601 C to F said:

> I accept from the evidence adduced that the second plaintiff was the alter ego of the first plaintiff. In fact, without the second plaintiff's royal heritage, her managing directorship, her own interest and training that she had brought into the company, the first plaintiff would have been nothing more than another company among the multitude of companies dealing with batik silk. The exclusiveness of the first plaintiff's Tjanting was brought about due to the personality of the second plaintiff…. The agreed and admitted documents in the common agreed bundle of documents were rhetoric with adulation over her batik designs… the first plaintiff is a non-entity without the second plaintiff … .

[16] Thus, considering the evidence as a whole and particularly from the contents of the articles complained of and the defences put forward, we are in agreement with the learned judge that the article under the heading 'APEC' is a grave slander of the first respondent's goods and libel upon the second respondent. By reasons of the said words and in consequence thereof the first respondent had been gravely injured in its manufacturing and trading character and the second respondent had been seriously injured in her personal business reputation and goodwill. Surely, she had suffered untold distress and embarrassment as a result of the article.

[17] For the above reasons we affirm the finding of the learned judge with regard to liability.

DAMAGES

[18] We now come to the question of damages. Learned counsel for the respondents argued that the damages were never pleaded as a ground of appeal. We rejected the argument on the basis that paras 12 and 15 of the memorandum of appeal sufficiently covered the question of damages for our

consideration. Before us, it was contended by the appellants that the award was excessive on the ground that the learned judged was greatly influenced by the prevailing trend then in awarding mega damages in relation to defamation suits.

[19] We agree with the appellants' contention. In an appeal against an award of damages in a defamation suit, Abdul Hamid Mohamad JCA (now FCJ) in *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161 at p 185G stated the applicable principle:

> The principle that this court should apply is clear: Whether this court is of the view that the trial judge had 'acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered'. (see *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun & other appeals* and the cases referred to therein).

[20] Whereas on the quantum of damages, His Lordship at p 185C to E observed:

> Until the arrival of Vincent Tan in 1995, the highest award ever given by the court in this country was RM100,000. Vincent Tan sky rocketed the awards. When the award was confirmed by the Court of Appeal, what was an isolated pinnacle in an otherwise undulating plain, the trend is set. When the Federal Court confirmed it, it became a binding precedent in all the courts in this country. But, now the Court of Appeal in *Liew Yew Tiam* has had second thoughts about it. The learned judge of the Court of Appeal who wrote the main judgment in *MGG Pillai* has sought to distinguish *MGG Pillai's* case. 'It is a decision that has been much misunderstood and the trend should be checked,' he said.

[21] It is worthy of note that the award of RM1.3M in the present case was also examined by His Lordship at p 184H in the above case.

[22] In *Charleston v News Group Newspapers Ltd* (1995) 2 AC 65 HL, Lord Bridge of Harwish at p 70 said:

> It is often a debatable question which the jury must resolve whether the antidote is effective to neutralize the bane and in determining this question the jury may certainly consider the *mode of publication* and the relative prominence given to different parts of it (Emphasis added).

[23] In his judgment, the learned trial judge held that the article complained of was published in the newspapers instead of 'Wanita' magazine, which is a monthly periodical when at p 595 C to D he said:

> I am satisfied that since the defendants had published in the *newspapers* and read by the general public, words containing an untrue imputation against the reputation of the plaintiffs, the defendants have indeed defamed the plaintiffs (Emphasis added).

[24] Therefore, we agree with the appellants' submission that the learned judge had failed to properly address his mind when he held that the article complained of was published in the newspapers. This is because newspapers have a wider audience compared to that of 'Wanita' magazine, a monthly periodical which largely caters for the women readers. The confusion on the part of the learned judge is amplified further when in other parts of his judgment, he had rightly held that the article complained of had appeared in the 'Wanita' magazine.

[25] Further, the learned judge recognized that 'Wanita' magazine had restricted publication and coverage when he said at p 603B:

> The magazine Wanita is not a sensational daily tabloid; it is a monthly periodical magazine and is read generally by women from all strata of life.

And yet, he did not attach to that element the weight and significance it deserved. This, in our judgment, amounts to misdirection on the part of the learned judge that warrants interference by this court.

[26] Thus, applying the principles in *Karpal Singh* to this case, this court is of the view that the learned trial judge had misapprehended the facts and was also influenced by the prevailing trend then in awarding the damages.

[27] With regard to the award of aggravated damages, we agree with the learned judge that there is indeed a case for the award. The finding of fact that the appellants were motivated by actual malice in publishing the article complained of warrants the making of an award of aggravated damages. However, the amount of aggravated damages must be a reasonable one. In our judgment, a reasonable amount should not be as much as the mother award.

[28] Thus, having regard to the principles of law established by the authorities and to the relevant circumstances of this case, we are of the view that the quantum of damages awarded by the learned trial judge is grossly excessive. In our view, the following awards are more reasonable:

(i) to the first respondent, the sum of RM100,000 as general damages for slander of goods;

(ii) to the second respondent, the sum of RM100,000 as general damages for libel

(iii) to the second respondent, the sum of RM50,000 as aggravated damages.

The total award made against the appellants would be RM250,000.

[29] Accordingly, the appeal on liability is dismissed and the appeal on quantum is allowed to the extent that the award of RM1.3M as damages is now reduced to RM250,000. As the appellants failed in the appeal against liability but succeeded partly on the quantum, we award half costs to the appellants.

CROSS APPEAL

[30] There is one further matter that must be addressed. It is the respondents' cross appeal. The respondents complained that the learned judge, after having found a case for innuendo, ought to have considered separate awards under the head of innuendo for slander of goods and libel. To our mind, the learned judge is correct in refusing to make the awards. At the trial, the respondents had not applied to amend to include separate causes of action for innuendo. And since in this case the respondents had not pleaded specifically for damages for innuendo, the claim for such damages in our view, cannot be entertained. We therefore, dismiss the cross appeal with costs.

Appeals dismissed. Damages reduced.

Reported by Loo Lai Mee